

NOV 15 2008

PATENT

Attorney Docket No(s). 3000177-7034992001

REMARKS

Please amend claims 1 and 18 as follows. Claims 36-55 have been cancelled as a result of Applicants' election of claims in response to the restriction requirement. A complete listing of the current pending claims is provided below. No new matter has been added.

**I. RESTRICTION REQUIREMENT**

In response to the Election / Restriction requirement in the Office Action, Applicants elect Group I - claims 1-35 - without traverse. Non-elected claims 36-55 have been cancelled without prejudice to pursue them in a related application.

**II. CLAIM REJECTIONS UNDER 35 U.S.C. § 112**

Claims 18-35 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 18 recites placing the food product and the gelatinous ingredient on opposite sides of an element with one or more apertures and thus is believed to have particularly pointed out and distinctly claimed the subject matter which Applicants regard as the invention. According to the Specification, one embodiment of such an element with one or more apertures is a grill and thus renders claim 18 to meet the requirement of § 112, second paragraph. Claim 18 is currently amended to clarify the claimed limitations. As such, Applicants respectfully submit that claim 18 and its dependent claims are believed to have overcome the rejection under 35 U.S.C. § 112, second paragraph.

**III. CLAIM REJECTIONS UNDER 35 U.S.C. § 102(e)**

Claims 1-7, 10-11, 14, 18-25, 28-29, and 32 stand rejected under 35 U.S.C. § 102(e) as being unpatentable over U.S. Pat. No. 6,632,468 issued to Morgan et al. (Morgan). Applicants respectfully traverse. More specifically, the Office Action cites to col. 6, ll. 29-30 of Morgan and concludes that the cited passages disclose the heating in microwave oven limitation. The Office Action further concludes that "it is inherent that the product releases steam because a

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gelatinous product comprises water as a component, which releases steam upon being heated. Applicants respectfully disagree.

Applicants first note that “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” MPEP 2131. Moreover, Applicants do not acquiesce in the status of the cited references as “prior art” and reserve the right to swear behind one or more of the references as prior art.

**A. For claim 1:**

Col. 6 ll. 20-35 of Morgan disclose a method of preparing a flavored and / or textured food item. Applicants respectfully submit, however, that Morgan neither explicitly nor inherently disclose, teach, or suggest the claimed limitations of claim 1. Claim 1 recites an ingredient that releases “steam” together with one or more additives onto the food item. The Office Action states that since Morgan’s texturizing / flavoring ingredient also contains water and thus inherently releases “steam” upon being heated. Applicants respectfully disagree.

Fundamental chemistry teaches that steam is the gaseous state of pure water and has a temperature of around 100 degrees Celsius at standard atmospheric pressure. Also, steam is generated through the *vaporization process* which is a *bulk process*. On the other hand, water vapor exists at various pressure and temperatures through the *evaporation process* which is a *surface phenomenon*. At least one distinction between Morgan and the claimed limitation of the ingredient lies in that the claimed limitation is heated to release steam together with one or more additives. Applicants respectfully submit that Morgan’s ingredient does not release “steam” because it would defeat its intended purpose for at least the following reasons.

1. Firstly, gelatin is known to decompose at 100 degrees Celsius, and Morgan does not explicitly disclose whether it is using other types or grades of gelatin which would not decompose at such temperature. To the contrary, Morgan merely discloses that its product, when heated, “allows *melting* of the gel structure.” Col. 3, ll. 43-47 (emphasis added). Such melting temperature is known to be lower than gelatin’s decomposition temperature which also represents, according to the Material Safety Data Sheet enclosed below, the boiling point of

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gelatin. Therefore, Morgan fails to disclose at least the claimed limitation of "release[ing] steam together with said one or more additives . . ." of claim 1.

Applicants further enclose the Material Safety Data Sheet of gelatin in Exhibit A to show support that gelatin decomposes at a temperature of 100 degrees Celsius for the Examiner's reference.

2. Secondly, Morgan relies on direct contact of its texturizing / flavoring product with the food item to achieve its intended purposes rather than on any steam. Morgan not only does not explicitly disclose achieving its flavoring purpose by using any steam but also explicitly recites that the use of its product requires "contacting the servable food portion with the servable food item portion to form a flavored and /or textured food item" and that the heating step is "not necessary if the food portion retains sufficient heat from cooking." Col. 6, ll. 20-29 and ll. 36-40.

As such, Applicants respectfully submit that Morgan does not disclose all the limitations of claim 1 and thus cannot be used to preclude the patentability of claim 1 and its dependent claims under 35 U.S.C. § 102.

B. For claim 18:

Morgan's method requires "*contacting the servable food portion with the servable food item portion* to form a flavored and / or textured food item" while "heating . . . in a microwave oven . . . is *not necessary*" if "[the] food portion retains sufficient heat from cooking." Col. 6, ll. 26-37 (emphasis added). That is, Morgan requires the ingredient to be in *direct contact* with the food item so as to serve its intended purpose – to produce flavored and / or textured food item. In contrast, claim 18 discloses an element with one or more apertures which separates the food item and the ingredient.

As such, Applicants respectfully submit that Morgan neither explicitly nor inherently discloses, teaches, or suggests at least the above claimed limitations of claim 18 and thus cannot be used to preclude the patentability of claim 18 and its dependent claims under 35 U.S.C. § 102(e).

IV. CLAIM REJECTIONS UNDER 35 U.S.C. § 103

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Claims 8-9,12-13, 15-17, 26-27, 30-31, and 33-35 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Morgan in view of U.S. App. Pub. No. 2001/0043974 to Linford et al. (Linford) and U.S. Pat. No. 4,297,942 issued to Benson et al. (Benson). Applicants respectfully traverse. Applicants further respectfully note that in order to establish obviousness of a claimed invention, all the claimed limitations must be taught or suggested by the cited references. MPEP 2143.03.

A. Applicants respectfully submit that, since all the above claims subject to rejection under § 103 depend directly or indirectly from claim 1, and since claim 1 would render Morgan unfit for its intended purposes, Morgan thus cannot be combined with Linford and Benson to render the above claims obvious under § 103.

B. For claims 8 and 26, the Office Action states that there is no patentable distinction between Morgan's cellulose gun and the claimed limitation of cellulose powder although the Office Action acknowledges that the cited references do not disclose cellulose powder.

Applicants respectfully submit that cellulose in powder form constitutes a patentably distinct feature from Morgan's. As Applicants presented above, Morgan requires the ingredient directly contact the food item to achieve the intended purpose for producing textured / colored food item. Morgan cannot, however, produce the intended "textured" food item if the cellulose is in powder form. As such, Applicants respectfully submit that the claimed limitation of "cellulose powder" is thus patentably distinct from Morgan's cellulose gum.

C. As such, Applicants respectfully submit that Morgan, Linford, and Benson, either alone or combined, do not disclose, teach, or suggest the claimed limitations of claims 1, 18, and their respective dependent claims and thus cannot be used to preclude the patentability of these claims.

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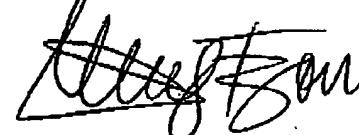
CONCLUSION

Based on the foregoing, all remaining claims are believed in condition for allowance. If the Examiner has any questions or comments regarding this amendment, please contact the undersigned at the number listed below.

The Commissioner is authorized to charge any fees due in connection with the filing of this document to Bingham McCutchen's Deposit Account No. 50-2518, referencing billing number 7034992001. The Commissioner is authorized to credit any overpayment or to charge any underpayment to Bingham McCutchen's Deposit Account No. 50-2518, referencing billing number 7034992001.

Respectfully submitted,

Bingham McCutchen LLP



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ENCLOSED: DESCRIPTION, SPECIFICATION, APPLICATION, PACKAGING & STORGAGE, AND MSDS OF GELATIN published by Ronas Chemicals Ind. Co. This article may also be found at <http://www.ronasgroup.com/gelatin.asp>

## Exhibit A

# Gelatin

11-15-2006 Wednesday | [Homepage](#) | [Contact us](#)

| [Description](#) | [Specification](#) | [Application](#) | [Packing&Storage](#) | [MSDS](#) | Their raw material | Their end products | Substitute | Rules of the goods |

## Description of Gelatin

**Formula of Gelatin:** C102H151O39N31

**F.W. of Gelatin:**

**CAS no. of Gelatin:** 9000-70-8

**DOT of Gelatin:** Nill

**NFPA no. of Gelatin:** 0-1-0

**Class no. of Gelatin:** Nill

**UN no. of Gelatin:** Nill

**HS code of Gelatin:** 35030090

**Specific Gravity of Gelatin:** 0.7 (fish gelatin)

**HomePage** yellow granule or powder.

**Description** Grade, medical grade, industrial grade gelatin from different bloom.

**Spec** nearly tasteless and odorless. Physical and chemical properties noted: colorless yellow, transparent, brittle, odorless, tasteless sheets, flakes, or powder; soluble in hot

**Application** serol, and acetic

**Packing** nsoluble in organic solvents. Gelatin swells and absorbs 5-10 times its weight of water to

**MSDS** in aqueous solutions between 30-35°C. Gelatin extracted from fish will have a gel point

**Raw material** ie of 5-10°C. These gels have increasing viscosity under stress and are thermally Gelatin has a unique protein structure that provides for a wide range of functional

**End product** chains form a compound helix in aqueous solution.

## Substitutes

**Synthetic / Non-Synthetic:**

**From fish:** Non-agricultural (3-0)

**From Isinglass** Non-agricultural (3-0)

From cattle bones: Agricultural (2-1)

From tanned cattle hides: Non-agricultural (3-0)

From pigskins: Agricultural (2-1)

From fish treated with food acids: Non-synthetic (2-1)

Isinglass: (Not considered gelatin) Non-synthetic (2-1)

From cattle bones: Non-synthetic (2-1)

From tanned cattle hides: Synthetic (3-0)

From pigskins: Non-synthetic (2-1)

## Specification of Gelatin

GELATIN FOOD GRADE:							
<b>Jellystrength SPECIFICATIONS (6.67%)</b>	100-120	120-140	150-170	170-190	190-210	210-230	240-260
	bloom						
<b>VISCOSITY (mps/6.67%)</b>	28-36	37-42	40-45	46-55	48-60	48-68	50-75
<b>ENGLER</b>	5-7.4	8-9.8	10-11.4	12-15	12-18	12-20	12-25
<b>VISCOSITY(E/15%)≤</b>							
<b>TRANSPARENCY (mm)</b>	100	100	100	200	200	300	400
<b>ASH CONTENT (%) ≤</b>	2.0	2.0	2.0	1.0	1.0	1.0	1.0
<b>MOISTURE (%) ≤</b>	14	14	14	14	14	14	14
<b>PH</b>	5.0-7.0	5.0-7.0	5.0-7.0	5.0-7.0	5.0-7.0	5.0-7.0	5.0-7.0
<b>SULPHUR DIOXIDE (mg/kg) ≤</b>	60	60	60	60	60	50	50
<b>AS (mg/kg) ≤</b>					1.0		

gelatin

<http://www.ronasgroup.com/gelatin.asp>

<b>HEAVY METAL (mg/kg) ≤</b>	20				
<b>TOTALBACTERIAL COUNT (piece/g) ≤</b>	1000				
<b>COLIBACILLUS</b>	NO FIND				
<b>SALMONELLA</b>	NO FIND				
<b>GELATIN MEDICAL GRADE:</b>					
Jellystrength <b>SPECIFICATIONS (6.67%)</b>	150-170 Bloom>	170-190 Bloom	190-210 Bloom	210-230 Bloom	230-250 Bloom
<b>VISCOSITY (mps/6.67%) ≥</b>	40	46	48	48	48
<b>ENGLER ≥ VISCOSITY (E/15%)</b>	9	11	12	15	15
<b>TRANSPARENCY (mm) ≥</b>	200	200	200	350	350
<b>ASH CONTENT (%) ≤</b>	2.0	2.0	2.0	2.0	1.0
<b>MOISTURE (%) ≤</b>	14	14	14	12	12
<b>PH</b>	5.0-7.0	5.0-7.0	5.0-7.0	5.0-7.0	5.0-7.0
<b>SULPHUR DIOXIDE (ppm) ≤</b>	50				
<b>AS (mg/kg) ≤</b>	0.8				
<b>HEAVY METAL (ppm)</b>	10				
<b>TOTALBACTERIAL COUNT PIECES/g ≤</b>	1000				
<b>COLIBACILLUS</b>	NO FIND				
<b>SALMONELLA</b>	NO FIND				
<b>GELATIN INDUSTRIAL GRADE:</b>					
JELLYSTRENGTH(Bloom/12.5%) <b>SPECIFICATIONS ≥</b>	240-260 Bloom	260-290 Bloom	290-310 Bloom	310-330 Bloom	340-360 Bloom
<b>VISCOSITY (mps/12.5%) ≥</b>	80	100	110	120	130
<b>ENGLER VISCOSITY(15%) ≥</b>	4.0	5.0	6.0	7.0	8.0
<b>ASH COUNTENT (%)≤</b>	3.0				
<b>MOISTURE (%)≤</b>	16				
<b>PH</b>	5.0-7.0				

### Application of Gelatin

Gelatin is widely used in the food industry as the cementing agent, emulsifying agent and stabilizer, also can be used in adhesive, emulsifier or premium cosmetics and medical industry for capsules. Gelatin is also used as a fining agent in wine, and as a stabilizer, thickener, and texturizer for a range of products. Gelatin can be used as either a processing aid or an ingredient.

### Packing&Storage of Gelatin

#### Packing of Gelatin:

Packing: packed in 25kg woven bag/kraft paper

Loading: 20 tons gelatin does come into one 20ft container without pallets or 17 tons can be loaded on plastic/wooden pallets.

#### Storage of Gelatin:

Keep in a tightly closed container, stored in a cool, dry, ventilated area.

### MSDS of Gelatin

#### Material Safety Data Sheets of Gelatin

#### 1. Product Identification

Synonyms: Gelatine; Gelfoam; Puragel

gelatin

<http://www.ronasgroup.com/gelatin.asp>**CAS No.: 9000-70-8****Molecular Weight:** Not applicable.**Chemical Formula:** Not applicable.**Product Codes:**

J.T. Baker: 2124

Mallinckrodt: H219

**2. Composition/Information on Ingredients****Ingredient CAS No Percent Hazardous****Gelatin 9000-70-8 100% Yes****3. Hazards Identification****Emergency Overview****WARNING! MAY FORM COMBUSTIBLE DUST CONCENTRATIONS IN AIR.****J.T. Baker SAF-T-DATA(tm) Ratings (Provided here for your convenience)****Health Rating: 0 - None****Flammability Rating: 1 - Slight****Reactivity Rating: 0 - None****Contact Rating: 0 - None****Lab Protective Equip: GOGGLES; LAB COAT****Storage Color Code: Orange (General Storage)****Potential Health Effects****Inhalation:****No adverse health effects expected from inhalation.****Ingestion:****Large doses may cause gastro-intestinal upset.****Skin Contact:****No adverse effects expected.****Eye Contact:****No adverse effects expected but dust may cause mechanical irritation.****Chronic Exposure:****No information found.****Aggravation of Pre-existing Conditions:****No information found.****4. First Aid Measures****Inhalation:****Remove to fresh air. Get medical attention for any breathing difficulty.****Ingestion:****If large amounts were swallowed, give water to drink and get medical advice.****Skin Contact:****Wash exposed area with soap and water. Get medical advice if irritation develops.****Eye Contact:****Wash thoroughly with running water. Get medical advice if irritation develops.****5. Fire Fighting Measures****Fire:****As with most organic solids, fire is possible at elevated temperatures or by contact with an ignition source.****Minimum dust cloud ignition temperature: 620C (1147F).****Explosion:****Fine dust dispersed in air in sufficient concentrations, and in the presence of an ignition source is a potential dust explosion hazard. Minimum explosive concentration: < 0.5 g/l (air) Maximum explosion pressure: 78 lb./sq. in.****Fire Extinguishing Media:****Water spray, dry chemical, alcohol foam, or carbon dioxide.****Special Information:****In the event of a fire, wear full protective clothing and NIOSH-approved self-contained breathing apparatus with full facepiece operated in the pressure demand or other positive pressure mode.**

gelatin

<http://www.ronasgroup.com/gelatin.asp>**6. Accidental Release Measures**

Remove all sources of ignition. Ventilate area of leak or spill. Wear appropriate personal protective equipment as specified in Section 8. Spills: Clean up spills in a manner that does not disperse dust into the air. Use non-sparking tools and equipment. Reduce airborne dust and prevent scattering by moistening with water. Pick up spill for recovery or disposal and place in a closed container.

**7. Handling and Storage**

Keep in a tightly closed container, stored in a cool, dry, ventilated area. Protect against physical damage. Containers of this material may be hazardous when empty since they retain product residues (dust, solids); observe all warnings and precautions listed for the product.

**8. Exposure Controls/Personal Protection**

Airborne Exposure Limits:

None established.

Ventilation System:

Not expected to require any special ventilation.

Personal Respirators (NIOSH Approved):

Not expected to require personal respirator usage.

Skin Protection:

Wear protective gloves and clean body-covering clothing.

Eye Protection:

Safety glasses.

**9. Physical and Chemical Properties**

Appearance:

Off-white to tan flakes or powder.

Odor:

Odorless.

Solubility:

Insoluble in cold water, soluble in warm water.

Specific Gravity:

1.2

pH:

No information found.

% Volatiles by volume @ 21C (70F):

0

Boiling Point:

Decomposes above 100C; Complete combustion above 500C.

Melting Point:

No information found.

Vapor Density (Air=1):

No information found.

Vapor Pressure (mm Hg):

No information found.

Evaporation Rate (BuAc=1):

No information found.

**10. Stability and Reactivity**

Stability:

Stable under ordinary conditions of use and storage.

Hazardous Decomposition Products:

Carbon dioxide and carbon monoxide may form when heated to decomposition.

Hazardous Polymerization:

Will not occur.

Incompatibilities:

Tannin, formaldehyde.

Conditions to Avoid:

Moisture, heat, flames, ignition sources and incompatibles.

**11. Toxicological Information**

No LD50/LC50 information found relating to normal routes of occupational exposure. Investigated as a reproductive effector.

-----\Cancer Lists\-----

--NTP Carcinogen--

Ingredient Known Anticipated IARC Category

gelatin

<http://www.ronasgroup.com/gelatin.asp>**Gelatin (9000-70-8) No No None****12. Ecological Information****Environmental Fate:****No information found.****Environmental Toxicity:****No information found.****13. Disposal Considerations**

**Whatever cannot be saved for recovery or recycling should be managed in an appropriate and approved waste disposal facility. Processing, use or contamination of this product may change the waste management options. State and local disposal regulations may differ from federal disposal regulations. Dispose of container and unused contents in accordance with federal, state and local requirements.**

**14. Transport Information****Not regulated.****15. Regulatory Information****\Chemical Inventory Status - Part 1\****Ingredient TSCA EC Japan Australia****Gelatin (9000-70-8) Yes Yes Yes Yes****\Chemical Inventory Status - Part 2\****--Canada--****Ingredient Korea DSL NDSL Phil.****Gelatin (9000-70-8) Yes Yes No Yes****\Federal, State & International Regulations - Part 1\****-SARA 302- -----SARA 313-----****Ingredient RQ TPQ List Chemical Catg.****Gelatin (9000-70-8) No No No No****\Federal, State & International Regulations - Part 2\****-RCRA- -TSCA-****Ingredient CERCLA 261.33 8(d)****Gelatin (9000-70-8) No No No****Chemical Weapons Convention: No TSCA 12(b): No CDTA: No****SARA 311/312: Acute: No Chronic: No Fire: Yes Pressure: No****Reactivity: No (Pure / Solid)****Australian Hazchem Code: None allocated.****Poison Schedule: None allocated.****WHMIS:**

**This MSDS has been prepared according to the hazard criteria of the Controlled Products Regulations (CPR) and the MSDS contains all of the information required by the CPR.**

**16. Other Information****NFPA Ratings: Health: 0 Flammability: 1 Reactivity: 0****Label Hazard Warning:****WARNING! MAY FORM COMBUSTIBLE DUST CONCENTRATIONS IN AIR.****Label Precautions:****Store in a tightly closed container.****Avoid dust cloud in presence of an ignition source.****Maintain adequate ventilation.**

**As part of good industrial and personal hygiene and safety procedure, avoid all unnecessary exposure to the chemical substance and ensure prompt removal from skin, eyes and clothing.**

**Label First Aid:****Not applicable.****Product Use:****Laboratory Reagent.**

gelatin

<http://www.ronasgroup.com/gelatin.asp>

**Gelatin raw material**

- 1) Collagen
- 2) Fish, cattle bones, hides, pigskins

**Gelatin end goods**

NIII

**Substitute of Gelatin**

See application.

**Importing & exporting rules of Gelatin**

Normal.

[<<TOP](#)

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